

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CLEVELAND S. ROGERS,

Petitioner,

v.

THOMAS BIRKETT,

Respondent.

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CASE NO. 2:11-CV-15485

JUDGE AVERN COHN

MAGISTRATE JUDGE PAUL J. KOMIVES

ORDER GRANTING PETITIONER'S MOTION TO SUPPLEMENT AND/OR AMEND THE  
PETITION (docket #17)

Petitioner Cleveland S. Rogers filed his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on December 15, 2011. On February 21, 2013, petitioner filed a motion to supplement his habeas petition. In his motion, petitioner made a general request that he be allowed to amend or supplement his habeas application. He did not, however, identify any claims that he sought to add, nor had he attached a proposed amended petition to his motion. For this reason, petitioner's motion to supplement was denied without prejudice. On April 8, 2013, the same date a Report and Recommendation was filed regarding the petition, petitioner filed this second motion to supplement or amend his petition. In this motion, petitioner clarifies that he is seeking to supplement his ineffective assistance of appellate counsel claim with additional information. Respondent has not filed a response opposing this motion.

Rule 15 of the Federal Rules of Civil Procedure, which is applicable to this habeas corpus action, *see Mayle v. Felix*, 545 U.S. 644 (2005); 28 U.S.C. § 2242, provides that leave to amend "shall be freely given when justice so requires." FED. R. CIV. P. 15(a). As the Supreme Court has

stated, “[i]n the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.--the leave sought should, as the rules require, be ‘freely given.’” *Foman v. Davis*, 371 U.S. 178, 182 (1962). As noted above, respondent has not filed a response opposing petitioner’s motion, and there is no “apparent . . . reason” for denying leave to amend.

Accordingly, it is ORDERED that petitioner’s motion to supplement or amend is hereby GRANTED. A supplemental Report & Recommendation addressing the additional arguments made in the supplement is being filed contemporaneous with this Order.

IT IS SO ORDERED.

s/ Paul. J. Komives  
PAUL J. KOMIVES  
UNITED STATES MAGISTRATE JUDGE

Dated: May 24, 2013